

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

-----x
:
UNITED STATES OF AMERICA :
:
versus : Criminal Action Number
:
ARDIT FERIZI : 1:16-CR-42
:
Defendant. :
-----x

Washington, D.C.
September 23, 2016

The above-entitled jury trial was continued
before the Honorable Leonie M. Brinkema, United
States District Judge.

THIS TRANSCRIPT REPRESENTS THE PRODUCT
OF AN OFFICIAL REPORTER, ENGAGED BY THE
COURT, WHO HAS PERSONALLY CERTIFIED THAT
IT REPRESENTS TESTIMONY AND PROCEEDINGS OF
THE CASE AS RECORDED.

A P P E A R A N C E S

FOR THE GOVERNMENT:

UNITED STATES ATTORNEY'S OFFICE
Brandon VanGrack, Esquire.
Gregory Gonzalez, Esquire.
2100 Jamieson Avenue
Alexandria, VA 22314
703-299-3700
Email: Brandon.van.grack2@usdoj.gov

FOR THE DEFENDANT:

OFFICE OF THE FEDERAL PUBLIC DEFENDER
Elizabeth Mullin, Esquire.
Jeremy Kamens, Esquire.
Assistant Federal Public Defender
Office of the Federal Public Defender
1650 King Street, Ste 500
Alexandria, VA 22314
703-600-0879
Elizabeth_mullin@fd.org

OFFICIAL UNITED STATES COURT REPORTER:

MS. TONIA M. HARRIS, RPR
United States District Court
Eastern District of Virginia
401 Courthouse Square
Tenth Floor
Alexandria, VA 22314
763-443-9034

P R O C E E D I N G S

THE DEPUTY CLERK: Criminal case number
1:16-CR-42, United States versus Ardit Ferizi. Would
counsel please note their appearances for the record?

MR. VAN GRACK: Good morning, Your Honor.
Brandon Van Grack and Gregory Gonzalez on behalf of the
United States.

THE COURT: Good morning.

MS. MULLIN: Good morning, Your Honor. Elizabeth
Mullin and Jeremy Kamens on behalf Ardit Ferizi.

THE COURT: We'll have our interpreter confirmed
while we're waiting for the defendant.

(Interpreter sworn.)

THE COURT: Ms. Mullin, who is going to be
speaking for the defendant?

MS. MULLIN: I am, Your Honor.

THE COURT: All right. So have you had enough
time to go over the presentence report yourself and with
your client?

MS. MULLIN: Yes, Your Honor.

THE COURT: All right. Are there any factual
corrections, additions, deletions of any sort you want to
make to the report itself?

MS. MULLIN: No, Your Honor.

1 THE COURT: All right. Now I know there's some
2 dispute about how the guidelines were calculated. The
3 probation office has calculated the offense level here as
4 a level 40. Because your client has received the
5 terrorism enhancement under 3A1.4 of the guidelines, his
6 criminal history is ranked at a level six. That
7 establishes an advisory guideline range of 360 months to
8 life. Although, the statutory maximum is 20 years of the
9 offense.

10 There are two counts of conviction here: Count
11 two, which is a material support count has a supervised
12 release term ranging from one year to life. The unlawful
13 access to computer, which is Count 3, the supervised
14 release range there is one to three years. The fine range
15 here is \$25,000 to \$250,000 and there's a 100 to 200
16 dollars of special assessments because there are two
17 counts of conviction. Correct?

18 MS. MULLIN: Correct.

19 THE COURT: I'll hear first from the United
20 States.

21 MR. VAN GRACK: Your Honor, in this case the
22 Government is seeking a sentence of 25 years, which is the
23 most permitted by statute, because the defendant's conduct
24 has definitely put the lives of 1300 military members and
25 Government employees at risk.

1 With the Court's permission, I would like to
2 focus first on the 3553 factors because the guidelines,
3 with one or two exceptions, are largely in agreement but
4 there are significant disagreements between the parties on
5 those 3553 factors.

6 THE COURT: All right.

7 MR. VAN GRACK: And I think reading these two
8 position papers, it would almost seem like you're dealing
9 with two different individuals and two different crimes.
10 The Government represents that this is an individual who
11 is a hacker who used those skills to support a terrorist
12 organization and has put these 1300 lives at risk for the
13 foreseeable future.

14 The defense counsel is representing that this is
15 simply a hacker who made a single mistake, was on drugs,
16 and didn't realize what he was doing. And these two
17 images -- there's no middle ground in terms of what the
18 defendant's conduct was.

19 And so I would like to first discuss one of the
20 representations in terms of the defendant's motive
21 represents in his letter to the Court that he was not an
22 ISIL supporter, he was not loyal to ISIL. But that's
23 disconnected with the facts in this case and those facts
24 come directly from the defendant's actions and his words.

25 In April 2015 he on his own develops a Website

1 to post ISIL videos and other propaganda. This isn't a
2 single instance, this is not something that on a single
3 day he just developed. He registers this Website, he
4 creates the infrastructure for the Website, he ensures
5 that it is able to post these videos, he has
6 communications with members of ISIL without this Website.
7 It's not just the creation of the Website, it is his words
8 with respect to that Website.

9 The Government provided some excerpts of
10 communications that the defendant had with individuals who
11 were against ISIL and challenged the defendant on why he
12 was allowing the Website -- why he was supporting the
13 Website that posted these videos. And it is actually --
14 even though the Government only provided a few
15 conversations, these are debates, these are conversations
16 with multiple individuals that occurs over a lengthy
17 period of time. And in these conversations the defendant
18 is constantly supporting ISIL, defending ISIL when
19 challenged about beheadings. He explains that ISIL
20 wouldn't kill someone without justification.

21 Most importantly, there's a discussion where he
22 is challenged about a posting in March of 2015 by a group
23 called the Islamic State Hacking Division and a well known
24 ISIL recruiter and facilitator named Junaid Hussain. And
25 in that post there was a kill list listing 100 service

1 members and their addresses. And this individual
2 challenges the defendant on the justification why -- "How
3 could you justify this behavior?" And the defendant says,
4 "Well those people, the U.S. Military, they're the ones
5 who are killing people in Iraq and Syria."

6 Perhaps what's most important about those
7 communications are that these are private communications.
8 This isn't something that was posted in a public forum.
9 This isn't something that was forwarded to ISIL. These
10 are communications with multiple people where no one else
11 is aware of what he's saying. And yet, in these
12 conversations, if he wasn't an ISIL supporter, he didn't
13 have to respond to them. He could have said, "Well, I was
14 high one day. I didn't know what I was doing." But
15 instead he has a vigorous defense of ISIL in each and
16 every instance.

17 But it's not just the Website, as the Court is
18 aware, because during that period of time after he creates
19 this Website he decides that he wants to ratchet up that
20 support to ISIL to actually figuring out a way to assist
21 in their task, to assist in this harm. And so on June
22 13th he hacks into a companies Website. And on his own,
23 as he's looking through this data, he's trying to figure
24 out what information here can help ISIL. And he knows
25 this already because he's seen the videos. He saw that

1 March 2015 post from Junaaid Hussain that had this kill
2 list of 100 service members. He's aware of the statements
3 that ISIL has made before. And so as he's looking through
4 this customer data base, in his mind is, "What can I do to
5 support ISIL?" And so on his own he looks for e-mail
6 addresses that end in .gov and .mil. And he codes that
7 information to identify ultimately the 1300 individuals
8 who are members of the military and U.S. Government. And
9 as soon as he finds this information the first thing he
10 does he reaches out to ISIL, he reaches out to Junaaid
11 Hussain.

12 And again, it's not just his actions but his
13 words. And the Government provided a transcript of those
14 conversations that he had with Junaaid Hussain. And it's
15 clear from those conversations what Junaaid Hussain and
16 Ardit Ferizi was going to do with this information. They
17 talk about creating a hit list, that this information
18 would hit them hard. To the extent there's any doubt in
19 the defendant's mind of the purpose of what this
20 information is, it's answered in that conversation with
21 Junaaid Hussain.

22 Defense counsel represents that this was again
23 the defendant just bragging, that he just wanted to show
24 off his hacking skills. But the conversation with Junaaid
25 Hussain did not only occur on June 13th. The

1 conversations continued days after. They continue to talk
2 June 14th, June 15th trying to verify that this
3 information is accurate. The defendant on his own reaches
4 out to Junaaid Hussain, wants to know how things are in the
5 Islamic State. And I think it's telling that on the day
6 that the Islamic State Hacking Division and Junaaid Hussain
7 posted this information on August 11th, an individual
8 reaches out to Junaaid Hussain and asks about the
9 whereabouts of Ardit Ferizi. And Junaaid Hussain says,
10 "He's been busy. He's on our team." And it is indicative
11 of the fact that this isn't something where the defendant
12 simply passed information and walked away, but this is a
13 collaboration. This is an effort between Junaaid Hussain
14 and Ardit Ferizi to harm these individuals.

15 The defendant, to justify his actions, explains
16 he asked the Court to believe a story in which there is a
17 journalist who wrote a false story about his support for
18 ISIL and he was mad, he was embarrassed he says that this
19 story falsely accused him of supporting ISIL. And so he
20 goes to the U.S. Embassy and finds that the U.S. Embassy
21 is unable to assist him. And that's the genesis of his
22 support for ISIL.

23 The Government submits that this is just a
24 nonsensical explanation. He asked the Court to believe
25 that he supported ISIL because he was so mad at being

1 falsely accused of supporting ISIL. It's indicative of
2 the defendant not taking responsibility for his conduct
3 and misrepresenting the motives for his conduct. But,
4 motives are one piece. The perhaps even larger piece here
5 is the actual harm. There's again a large gap between the
6 Government's representations as to who was harmed and how
7 they were harmed in the defense counsel's representations.

8 And in this case, as the Government represents,
9 the information here on these 1300 people, this wasn't
10 publicly available information. A lot of this information
11 -- in fact there's no evidence at all in the record that
12 this information, all this information was public.
13 There's no question that some of that information is
14 publicly available. There's also no question that on the
15 Internet there's lots of information about us that maybe
16 perhaps we would otherwise not want to be available. But,
17 that's not the facts in this case.

18 Even if they were, Your Honor, even if all this
19 information was publicly available, it misses the point
20 that all the information that was necessary was
21 information that would identify the person, who they
22 worked for, and where they lived because this was a hit
23 list. The point of this list was to find these
24 individuals and harm them, "to strike out their nets."
25 Those are Junaid Hussain's words. And so, even if -- the

1 defense counsel says, "Well, there weren't social security
2 numbers." This wasn't about stealing money from these
3 people. This is about finding them and harming them.

4 And the defendant, in terms of the value of this
5 information, it's clear from the defendant's own words and
6 his own actions he says in his letter to the Court that
7 when he saw the post he felt bad for these people because
8 they were so scared. Well, if this information wasn't
9 sensitive why were they scared. What were they scared of
10 if this information was just floating on the Internet and
11 they were fully aware of it?

12 And in fact from his conversations with Junaid
13 Hussain it's the same thing. When the defendant finds
14 this information and provided it to Junaid Hussain, Junaid
15 Hussain doesn't say, "Well, thanks I have a few hundred
16 other names I'm working on, but I'll get to your list.
17 He's excited about it. His reaction. And the Court has
18 seen those conversations. This is something where this is
19 a big deal. They are aware of the fact that this
20 information is information that would be useful for people
21 who are unable to travel to a war zone and are seeking to
22 do harm here in the United States.

23 And this entire conversation on what the
24 information is it misses an even larger point, because
25 it's not what the information is but what they did with

1 the information. Which is, ISIL took these names and told
2 the supporters to find them and harm them. They have
3 permanently put a target on the backs of these
4 individuals. And so, the truth is if anyones name and
5 their location is on something called an "ISIL hit list,"
6 an "ISIL kill list," that alone is enough to invoke fear
7 rightly so in those individuals.

8 This isn't a hypothetical situation. Even in
9 this district there's already been someone who was
10 arrested for admitting for the fact that he drove by the
11 homes of two individuals in Virginia whose names and
12 addresses were on the kill list that Junaid Hussain posted
13 in March of 2015. And the notion that again it's just the
14 name, it's just a posting, is, I think, captured by one of
15 the victim letters. Obviously I won't say the individuals
16 name, but the individual says that she now lives in the
17 state of fear when she interacts with Muslims and she
18 feels guilty about that but she doesn't know exactly
19 what -- when this harm will go away. And most importantly
20 in that letter she doesn't decry the fact that her e-mail
21 address was used or phone number. She says that its her
22 name. She says that she has a unique last name that just
23 knowing that ISIL has marked her, just knowing her name is
24 enough for an individual to find and locate her.

25 This disconnect between the harm that the

1 defendant's conduct has caused and between the parties, I
2 think, also drives their references to similar situated
3 defendants, similar sentences. And as the Government can
4 see, this is not a case that is easy to button hold it,
5 easy to compare to other cases. And part of that is
6 because of the number of victims. It is rare that you
7 have a case where there are this number of individuals who
8 have been directly harmed by an individuals conduct. And
9 part of it is also because of the medium he used. We're
10 used to situations where an individual here in the United
11 States commits some sort of -- facilitate some kind of
12 violent act or travel to a war zone. And because the
13 individual used his hacking skills into a computer he was
14 thousands of miles away. But that doesn't change the fact
15 that at the core of what he did was provide information
16 that would allow others to facilitate an attack.

17 One of the cases that seems most analogous is
18 the *Chesser* case, which was here in this District where
19 the individual was sentenced to 25 years. And there were
20 a number of ways the individual provided support to ISIL
21 as there is in this case. But one of the main things that
22 *Chesser* did was provide information on nine individuals
23 and instruct people to go kill them. And one of the main
24 differences is, whereas there were nine victims in the
25 *Chesser* case, here there are 1300.

1 There's another case in the Western District of
2 New York, *Elfgeeh*, E-L-F-G-E-E-H. In which an individual
3 a few months ago was sentenced to 22-and-a-half years.
4 And like the defendant the individual posted propaganda.
5 He also attempted to facilitate the travel of three
6 individuals to Iraq and Syria. Two of those individuals
7 were working, I believe, as FBI sources and never
8 travelled. But again, you have a comparison of a
9 facilitation of an attack that's someone who was located
10 here but is still a facilitation.

11 The cases that the defendant talks about, I
12 believe *Farrokh* and *Amin* are two of those cases. In each
13 of those cases there are no victims. There are no victims
14 that are identified in any case. For *Farrokh*, an
15 individual who was trying to travel to Iraq and Syria. He
16 never travelled there. No one was harmed by his conduct.
17 That's not to say his conduct wasn't serious. But again,
18 in this case we have 1300 victims.

19 I would like to just briefly talk about some of
20 the characteristics of the defendant. Although it was in
21 our position paper, there are two points that were not
22 there that I would like to stress before the Court. One
23 concerns the acceptance of responsibility. And I think
24 it's a key point reading the defendant's letter to this
25 Court, because it is indicative of someone who has failed

1 to accept responsibility for his conduct. He blames
2 drugs. He discusses this being sort of a momentary laps
3 of judgment and the facts are to the contrary. And he
4 also comes up with really a nonsensical story to explain
5 why he got involved in ISIL in the first place.

6 The second point the Government would like to
7 raise concerns his criminal history. And in his
8 submission paper he discusses that in 2013 he was in
9 trouble for hacking a Kosovo Government database and
10 received an alternative sentence. And we would like to
11 submit to the Court what the Government has marked as
12 Government Exhibit 1. It's been provided to defense
13 counsel before. And I would not read from this document
14 because it concerns -- if I may. Thank you.

15 THE COURT: And you're filing it under seal?

16 MR. VAN GRACK: Yes, Your Honor. It's a
17 document from the Kosovo police. And in it it details 10
18 different incidents, criminal incidents, involving the
19 defendant. And the point of this is not to get into each
20 of those details, because the Government isn't fully aware
21 of those details. But it's to bring to the Court's
22 attention that this is not someone who just in a single
23 instance hacked a Government database and was in trouble.
24 This is someone who, over multiple years, was engaged in
25 multiple actions including criminal activity more than

1 just hacking into a Government database.

2 And one of the reasons we bring this to your
3 attention, Your Honor, because one of the representations
4 in the defendant's position paper is that he is unlikely
5 to reoffend. Well, the point is he's already reoffended
6 over and over and over again. The defendant was already
7 given a second chance. He received an alternative
8 sentence. And he took that chance and instead he engaged
9 in hacking again but this time that hacking actually
10 harmed individuals.

11 THE COURT: All right. Just so I can understand
12 this exhibit. It appears as though it addresses incidents
13 going back to 2011. Is that -- am I reading that
14 correctly?

15 MR. VAN GRACK: Yes, Your Honor. And
16 admittedly, a lot of this is in Albanian. But there's
17 enough in English, I think, to get the point across.

18 THE COURT: The point is he would have been 15
19 years old at the time.

20 MR. VAN GRACK: The reason why this is under
21 seal, all of this conduct was when he was a juvenile,
22 which is why we're not getting into the specifics of that
23 conduct.

24 THE COURT: All right.

25 MR. VAN GRACK: Your Honor, to briefly talk

1 about the guidelines. As the Court has already reported,
2 the probation office has calculated them to be an offense
3 level 40 and criminal history six, which the Government
4 agrees with.

5 There appear to be two points, two issues that
6 the defense counsel has with respect to that calculation.
7 The first is that there should not be two points awarded
8 -- a two level adjustment under 2M5.3, because the
9 defendant didn't intend or has reason to believe that his
10 support would cause a violent act. And I think the
11 Government has addressed that in its prior points.

12 The larger question that defense counsel raises
13 is they seek a downward departure under 4A1.3. Arguing
14 that the criminal history six overstates the defendant's
15 criminal history. The Government's position is that this
16 downward departure should not be applied to terrorism
17 cases. Under 3A1.4 in the terrorist enhancement,
18 individuals whose conduct is connected to a crime of
19 terrorism automatically received this bump to criminal
20 history number six. And the downward departure in 4A1.3,
21 the factors the Court are to consider is whether it
22 overstates their criminal history or overstates their
23 ability to reoffend. Well, that's almost every terrorist
24 because they are automatically moved to criminal history
25 six. And so under the defense counsel's interpretation in

1 almost every terrorism case, it eliminates that automatic
2 enhancement. And so it actually eliminates the entire
3 purpose of that enhancement was to identify the
4 seriousness of a terrorism offense.

5 But even if the Court believes that it can be
6 applied in a terrorism case, the Government's position is
7 this is not the case for a downward departure to be
8 applied. This is an individual that has permanently put
9 the lives of 1300 individuals at risk and this is also
10 someone who has shown that he is a reoffender and someone
11 who is likely reoffend again. And for this reason the
12 Government ask that he be sentenced to 25 years. Thank
13 you.

14 THE COURT: Okay. Thank you. Ms. Mullin.

15 MS. MULLIN: Your Honor, if it's okay I'll start
16 with the 3553(a) factors as well.

17 Your Honor, Mr. Ferizi wants the Court to know
18 that he renounces ISIL, he has never been loyal to ISIL,
19 and he does not embrace what ISIL stands for. Throughout
20 this process from his extradition from Malaysia to this
21 country and up until here today he has expressed nothing
22 but respect for the laws of the United States.

23 It is important to remember that Mr. Ferizi was
24 just a teenager when he committed these offenses and he is
25 now doing everything he can to return to his family and

1 his community in Kosovo, who as the Court can see from the
2 letters submitted, love him and are waiting for him to
3 return.

4 Now Mr. Ferizi doesn't dispute that he was
5 active online. And he spent most of his days online in
6 his dorm room in Malaysia. And he doesn't dispute that he
7 made hyperbolic comments about ISIL to members of ISIL and
8 that he was interested in ISIL.

9 He also pursued pedophiles online, communicated
10 with romantic interest and donated to the Democratic party
11 of the United States. We submit that his online
12 activities, though they do events a juvenile who was
13 bragging and showing off and trying to feel cool, we
14 submit that his online activities show that he was not
15 motivated by radical ideology. And indeed he never
16 planned to go fight for ISIL as many materials support
17 defendants do. He never made any real plans to fight or
18 to do anything other than sort of his virtual
19 communications with ISIL. In fact, he rebuffed
20 invitations to go fight in Syria.

21 Now the Government calls his explanation for his
22 conduct nonsensical. We agree it is nonsensical. It is a
23 nonsensical because he was a confused teenager with
24 confused motivations. The Government doesn't dispute that
25 there was a journalist in Kosovo that posted a piece about

1 Mr. Ferizi saying he went to go fight in Syria. This
2 deeply embarrassed his family. And the Court can see that
3 from the letters from Mr. Ferizi's mother and father they
4 were embarrassed, they were ashamed.

5 Mr. Ferizi had just started a new university as
6 a freshman, or their version of a freshman. He's 18 or 19
7 years old, he feels his social life is ruined, people are
8 laughing at him and calling him a terrorist. And so, his
9 motivation was nonsensical. It was a completely
10 nonsensical juvenile, unconsidered response to then go and
11 assist ISIL in the way he did and to sort of communicate
12 with ISIL as a way to, in his mind, get back at the United
13 States Embassy for not removing the smear post. And so it
14 was nonsensical because he was a nonsensical misguided
15 teenager who really didn't know what he was doing.

16 And so it's not that he's not -- he's not
17 accepting responsibility. He accepts responsibility for
18 his actions, but that truly is his explanation for what he
19 did. And the Government is right it doesn't make sense
20 because he was a juvenile. And so that was his motivation
21 underscores that he really truly wasn't motivated by a
22 deep-seated radical ideology.

23 Your Honor, in any case involving material
24 support of a designated terrorist group like ISIL, it's
25 not hard because of the horrible offenses perpetrated by

1 ISIL to assume the worse about a defendant and evaluate
2 his conduct by imagining the worse possible outcome that
3 could result from it no matter how remote the risk of that
4 outcome is. And that's essentially what the Government
5 has done by stating that these 1300 victims, whose e-mail
6 address were sent, are marked as enemies of ISIL.

7 THE COURT: Well, how do you address the
8 argument that here in Northern Virginia there apparently
9 has been evidence that -- that people on this list or at
10 least one person on this list, has in fact felt actual
11 threats?

12 MS. MULLIN: This is -- we don't dispute that
13 the victims experienced fear and will continue to. And
14 Mr. Ferizi has apologized for that and he will and he
15 should be punished for that. However, the reality of it,
16 if you look at what he did calmly and soberly, but the
17 reality of the information he sent really could not
18 facilitate an individual specific attack. He did not send
19 addresses. He did not send home addresses. He did not
20 send work addresses. He did not send specific whereabouts
21 as to where these people might be in any given day.

22 As so, he did send passwords, but of course that
23 information is moot now as the passwords has been changed.
24 So, while the individuals rightly and understandably
25 experience fear, the information that he sent, if you

1 really think about it, could not anymore than any other
2 information out there in the world, could not facilitate
3 or assist in a specific attack on any one individual. The
4 value of the material that he sent is in its propaganda's
5 message. And I think that there's a distinction there in
6 that what he did supported propaganda, but what he did not
7 support or facilitate or wasn't even able to facilitate a
8 specific violent attack.

9 And so that distinction, I think, is important
10 when we think about material support cases because it's
11 different than someone who targets a location and gives
12 specific information that can assist in an actual physical
13 attack on an individual on a specific location.

14 So what he gave essentially -- I mean anyone can
15 look on the Internet and find a name. And unlike Adam
16 Chesser he didn't send an address or a where about, or a
17 time, or a method. And so I think there is a distinction
18 there when you really consider the information he sent and
19 the value of it.

20 Again, Mr. Ferizi does not mean to undermine the
21 fear that the victims experienced. I don't think I -- I
22 take issue with the idea he hasn't accepted
23 responsibility. He has in many ways and in many ways that
24 are submitted in our under sealing filing, in our redacted
25 filing. And he will be punished for the harm that he

1 committed, which is the psychological harm and the
2 propaganda value of the information or message that he
3 sent. But I submit that he shouldn't be punished for a
4 harm that he has not caused, a speculative and remote
5 harm.

6 Materials support an extraordinary broad statute
7 and it encompasses an extraordinarily broad amount of
8 conduct. And in some cases defendants who are convicted
9 commit specific acts of violence themselves or intend to
10 go fight for -- intend to fight in Syria for ISIL or
11 elsewhere and seek to join terrorist groups.

12 This is not one of those cases. Mr. Ferizi was
13 existing in a totally virtual world. He was a teenager.
14 He never intended to fight for ISIL. He never intended to
15 commit or assist in a violent attack on any one
16 individual. And for those reasons we submit that the
17 sentence we requested of 72 months is appropriate.

18 Briefly, with respect to the guidelines, we
19 agree that the terrorism has been applied technically.
20 However, there's nothing in the guidelines to suggest that
21 4A1.B3 would preclude the Court from granting a downward
22 departure in terrorism cases. And while Mr. -- Mr. Ferizi
23 has never disputed that he engaged in hacking activities
24 as a youth, as a juvenile, in Kosovo, as the Court knows,
25 he didn't serve any time for those. So technically under

1 the guidelines he would be in category one.

2 Additionally, Your Honor, the reason why I think
3 4A1.3 could apply to terrorism cases is because the
4 terrorism enhancement itself is so broad. It clumps
5 together all defendants accused of terrorism regardless of
6 distinctions in their level -- the level of their material
7 support, the quality of their material support, the
8 duration of their support of a terrorist organization.
9 And so that's why I think that a guideline such as 4A1.3
10 does apply in cases where the terrorism enhancement is so
11 draconian and so broad as to sweep all defendants accused
12 of terrorist activity into its net.

13 All right. Thank you.

14 THE COURT: All right. Are there any victims
15 who want to be heard?

16 For the record, the Court has reviewed the
17 numbers of letters that were submitted by the Government
18 in supports of its position as well as the letters that
19 were submitted on behalf of Mr. Ferizi. All right, Mr.
20 Ferizi come up to the lectern.

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: This is your opportunity to say
23 anything you would like the Court to consider before the
24 sentence is imposed.

25 THE DEFENDANT: Yes, Your Honor. I feel so bad

1 for what I did. I take full responsibility for that. And
2 I'm very sorry for what happened for making people scared.
3 So that's what I have to say.

4 THE COURT: Do you have any true understanding
5 of what you actually did?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: And I'm still not sure. Why did you
8 do it?

9 THE DEFENDANT: I don't know, Your Honor. Doing
10 something fast. It wasn't something like -- it was
11 something -- happened very fast.

12 THE COURT: It didn't happen that fast. You're
13 communicating back and forth over a period of time, aren't
14 you?

15 THE DEFENDANT: Yes, Your Honor. It's coming
16 from 2015. Usually it starts in March. I started to chat
17 with a girl. She was supporting ISIS online and then I
18 got involved in -- in their chats. So, yeah.

19 THE COURT: Well, this was a case where it
20 wasn't a one time incident. You had plenty of time to
21 think about what was going on. Now I am not insensitive
22 to the fact that you're only 20 years old. You obviously
23 have a certain talent for working on the computer. You've
24 been able to hack into Government databases at least since
25 the age of 15.

1 And I think your youth and also the significant
2 mental health information, which was provided by the
3 Government, are factors that it is appropriate for the
4 Court to consider. At the same time you are 20 years old
5 so you're not a child any longer. And you had the
6 opportunity when you had those first rounds of issues with
7 the courts in Kosovo to have this issue addressed.

8 I recognize that there's much science these days
9 that the brain of human beings is not fully developed
10 frankly until people are in their mid-20's which explains,
11 in some peoples eyes, the reason why younger people tend
12 to be involved in a lot of criminal activity.

13 But, that can't excuse this kind of conduct.
14 And I think the Government's representations about the
15 impact that this kind of conduct had on 1300, absolutely
16 innocent, victims cannot be ignored by the Court. It's
17 also extremely important to send messages to other young
18 people like yourself who has skills with computers that
19 playing around with computers is not a game. The hacking
20 into computer systems is becoming a major problem
21 throughout the world. And in fact, you know, cyber
22 warfare has become almost the latest and most serious area
23 of concern for many people in Government.

24 And so what you did was extremely serious. And
25 the Court feels that the sentence has to reflect that.

1 And so, I am going to impose a sentence that is a slight
2 variance from the guidelines. I'm going to accept the
3 guidelines as they've been calculated, because I think
4 they are correct given the facts of this case. But,
5 because of your youth and what are some real serious
6 mental health issues, some minor variance is appropriate.
7 Not merely as much as defense counsel requested, however.

8 The Court also did look at comparators. The
9 ones that the Government and defense counsel gave the
10 Court. I agree with the Government that the comparators
11 whom the defense identified *Amin, Farrokh, and Coffman*
12 none of those cases involved third party victims the way
13 this one did. And although the defense has argued that
14 the victims are not victims as -- as much as in the other
15 case that the Government has cited, just having your name
16 on a list knowing that you've been identified to a
17 terrorist group, in my view, is sufficiently terrorizing
18 for those people on the list. And their letters certainly
19 attest to that fact.

20 And the one person who has a very unique name,
21 in particular, mentions that maybe the only name in that
22 particular area would make it very easy to find that
23 person. And the fact that they are basically on a hit
24 list making them basically targets is very, very serious.

25 Because of the need, among other things, for

1 general deterrence, the need to make sure this defendant
2 is deterred from such future conduct, given his track
3 record going back five or six years with hacking, the
4 Court is satisfied that a total sentence of 240 months is
5 sufficient but not greater than necessary to achieve the
6 purposes of Section 3553(a). That sentence is composed of
7 180 months on the material support count to be followed by
8 60 months consecutive on the unlawful access to protected
9 computer information for a total of 240 months.

10 Now the defendant will be given credit for the
11 time he has been serving since October 12, 2015 when he
12 was arrested in Malaysia. At the completion of the 240
13 month sentence, the defendant will serve a period of 10
14 years of supervised release on Count 2 and a period of
15 three years of supervised release concurrent on Count 3.

16 The terms and conditions of your supervised
17 release, Mr. Ferizi, are first of all your uniformed good
18 behavior. That means you're not to violate any federal,
19 state, or local laws while on supervision. Do you
20 understand that?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Secondly, you have to comply with
23 all of the conditions of supervision, which will be
24 explained to you by the probation office and explained to
25 you by them as well. Do you understand that? And it will

1 be on the judgment order. Do you understand?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Now there are a series of special
4 conditions. The first is, you will have to satisfactorily
5 participate in such mental health treatment as directed by
6 the probation office with an emphasis on
7 deradicalization. You will have to take any medication
8 and submit to any programs as directed by the probation
9 office. You must waive privacy rights that you have to
10 the mental health treatment so that probation officers can
11 monitor your progress and the Court will waive any cost of
12 that program. Do you understand that?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Secondly, you must be drug free.
15 You will have to submit to drug testing in such in or
16 outpatient drug treatment as the probation office directs.
17 Do you understand that?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: You have to waive any privacy rights
20 that you have to the drug treatment program so it can be
21 monitored by the probation office and the Court will again
22 waive the cost of that program. Do you understand?

23 THE DEFENDANT: Yes.

24 THE COURT: You are not permitted to have any
25 contact or communications whatsoever with any known

1 terrorist, terrorist organizations, or any known hackers.
2 If it is determined that you have had such communication
3 whether it's by the Internet, by telephone, by letter in
4 any respect, you're in violation. Do you understand that?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: You cannot possess or use any
7 computer without having received permission from the
8 probation office and you will have to submit to such
9 monitoring technology as exist at the time you're released
10 so that the probation office can monitor any
11 communications you might have. Do you understand that?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: All right. And lastly, you have
14 to comply with any orders from the immigration authorities
15 as to your deportation. Do you understand that?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: If deported from the United States,
18 you are not allowed back in this country for any reason
19 whatsoever during that 10 year period. Should you return
20 to the United States in that 10 year period, you will have
21 two problems: One, you're in violation of this Court's
22 sentencing order and could be sentenced back to prison for
23 up to 10 years. Do you understand that?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: And secondly, the Government could

1 prosecute you for a new and separate crime called "illegal
2 reentry after deportation" with a violent felony
3 conviction on your record. Do you understand that?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: The Court finds, given your
6 financial situation -- oh, there is an issue about
7 restitution in this case, isn't there, from the victim?

8 MR. VAN GRACK: Yes, Your Honor.

9 THE COURT: Is there a restitution order that's
10 been prepared?

11 MR. VAN GRACK: No, it has not been prepared,
12 Your Honor.

13 THE COURT: Was there a reason why it is not
14 done?

15 MR. VAN GRACK: No. Unfortunately, the victim
16 information, the specific victim information was late in
17 being passed to the probation office and so the Government
18 has not --

19 THE COURT: What's the Government's position?
20 My understanding it was in the plea agreement. Wasn't
21 there an agreement to the restitution?

22 MR. VAN GRACK: Well, in the statements of facts
23 as well, Your Honor, I believe it is not contested. It
24 was over \$40,000 in damages.

25 THE COURT: The amended petition which has, I

1 think, \$100,000 for good will, I would not find
2 appropriate. I don't think it's adequate documentation
3 for the good will issue, is there?

4 MR. VAN GRACK: The Government will agree with
5 that position, Your Honor.

6 THE COURT: All right. Ms. Mullin, have you had
7 a chance to discuss the restitution issue with your client?

8 MS. MULLIN: Yes, in general terms. I will do
9 so when a restitution order is submitted.

10 THE COURT: Is that going to be done today, the
11 restitution order?

12 MR. VAN GRACK: Yes, Your Honor.

13 THE COURT: All right. I want to make sure we
14 get that taken care of. And Mr. Ferizi, you understand
15 than an additional condition of your supervision is that
16 you're going to have to make a good faith effort to repay
17 that money to the Arizona company whose computers you
18 hacked?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: That's part of your plea agreement.
21 Do you remember that?

22 THE DEFENDANT: Yeah, I think so, yeah.

23 THE COURT: I think?

24 THE DEFENDANT: I think, yes, I saw it.

25 THE COURT: All right. Because of the amount of

1 restitution and the length of this sentence, the Court
2 finds the defendant does not have the financial resources
3 to pay the cost of incarceration, cost of supervision, or
4 any of the statutory fines.

5 However, there are \$200 in special assessments.
6 Those must be paid. The defendant waived his right to
7 appeal both his conviction and his sentence and his plea
8 agreement as long as the sentence was not higher than the
9 statutory maximum.

10 However, I still want to make sure Counsel you
11 talk with your client about whether he wants to file an
12 appeal. And obviously if he does, he will need to file
13 it. All right. Is there anything further we need to
14 address?

15 MR. VAN GRACK: No, Your Honor.

16 THE COURT: Anything further from defense
17 counsel?

18 MS. MULLIN: No, Your Honor.

19 THE COURT: All right. The defendant is
20 remanded.

21
22 **(Proceedings adjourned at 9:54 a.m.)**
23
24
25

CERTIFICATE OF REPORTER

I, Tonia Harris, an Official Court Reporter for the Eastern District of Virginia, do hereby certify that I reported by machine shorthand, in my official capacity, the proceedings had and testimony adduced upon the Sentencing in the case of the **UNITED STATES OF AMERICA versus ARDIT FERIZI**, 1:16-CR-42, in said court on the 23rd day of September, 2016.

I further certify that the foregoing 34 pages constitute the official transcript of said proceedings, as taken from my machine shorthand notes, my computer realtime display, together with the backup tape recording of said proceedings to the best of my ability.

In witness whereof, I have hereto subscribed my name, this the May 11, 2017.



Tonia M. Harris, RPR
Official Court Reporter